25 **S.B. CIVIL MISC. APPEAL NO.528/2007.**

Kanti Lal & Ors.
Vs.
National Insurance Co. Ltd. & Ors.

Date of Order :: 6th February 2007.

HON'BLE MR. JUSTICE DINESH MAHESHWARI

Mr. Manish Pitaliya, for the appellants.

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BY THE COURT:

By way of this appeal against the common award dated 17.09.2005 made by the Motor Accidents Claims Tribunal, Chittorgarh insofar it relates to Claim Case No.529/2003, the claimants, i.e. the parents, sisters and brother of the vehicular accident victim Jayesh, about 22-25 years in age, seek enhancement over the amount of compensation awarded by the Tribunal in the sum of Rs.6,92,000/-.

The claimants asserted before the Tribunal that the deceased was earning substantially about Rs. 4,000/- per month as salary income and another Rs.14,000/- per month as rental income. The claimants produced income tax returns of the deceased for last three years showing his net income at Rs. 55,751/-, Rs.85,196/- and Rs.1,09,374/- for the years 1999-2000, 2000-2001 and 2001-2002. The Tribunal has noticed from such income tax returns and from the testimony of the

father of the deceased that the settled income of the deceased was only of salary from one M/s. Bhagwati Traders at Rs.48,000/- per annum. In the accounting year 2000-2001, the income of Rs.50,200/- was shown from selling of metal scrap and in the year 2002-2003, the income of Rs.48,368/- was shown from house property; and that house property was in possession of the claimants. Taking an overall view of the matter, the Tribunal has accepted the income of the deceased at Rs.48,000/- for the purpose of considering loss for the claimants and after deducting one-third on personal expenditure of the deceased and with application of multiplier of 15, has assessed pecuniary loss at Rs.4,80,000/-. The Tribunal has allowed entire amount of Rs.1,40,000/- spent by the claimants on the treatment of the deceased and has further allowed Rs.10,000/- each to the sisters and brother of the victim and Rs. 20,000/- each to the parents towards non-pecuniary loss and after allowing another Rs.2,000/- towards funeral expenses, has assessed total loss for the claimants at Rs.6,92,000/-.

Learned counsel for the claimant-appellants has strenuously contended that the Tribunal has seriously erred in not considering the income of the deceased as shown from the income tax returns for last three years; that such returns clearly establish regular growth of the income of the deceased and in view of his younger age, substantial component of future

prospects ought to have been provided. Learned counsel further submitted that the Tribunal has erred in discarding the entire component of the income from the house property while assessing loss for the claimants; that there had been other sources of income of the deceased which have also not been taken into consideration and the Tribunal has proceeded to take only the salary income from M/s. Bhagwati Traders at Rs.48,000/- per annum and the assessment so made by the Tribunal has fallen substantially on the lower side and that has resulted in making the award grossly insufficient in comparison to the loss suffered by the claimants. During the course of submissions, learned counsel for the appellants has shown copies of the income tax returns produced before the Tribunal and their supporting computations.

Having given a thoughtful consideration to the submissions made by the learned counsel and having examined the impugned award, this Court is clearly of opinion that the ultimate award made by the Tribunal in favour of the claimants stands rather on the higher side and rules out any scope for enhancement.

So far the estimate on the income of the deceased is concerned, the Tribunal has taken a reasonable view of the matter. The copies of income tax returns and computations placed by the learned counsel for the appellants for perusal

show that for the accounting year 1999-2000, the income of the deceased was shown at about Rs.55,751/- that included Rs.32,000/- as salary income from M/s. Bhagwati Traders after accounting for the standard deduction, Rs.24,169/- as the income from other sources, and Rs.418/- from bank interest; and the component of income from other sources included interest of Rs.494/- on SB Account and Rs.23,675/- being the interest income from others. The income for the accounting year 2000-2001 includes the same salary income of Rs.32,000/- from M/s. Bhagwati Traders and a component of Rs.50,200/- being the commission income from metal scrap business. The component of income from yet other sources is comprised of interest income of Rs.22,257/- and after deduction of interest paid at Rs.22,400/-, a figure of Rs.144/- has been shown in the negative. The income for the accounting year 2001-2002 again shows the very same salary income from M/s. Bhagwati Traders and then includes Rs.48,368/- being the net income from house property. The component of other income is of interest from SB Account, notified companies and bank interest at Rs.7,506/- and interest from other sources at Rs.29,006/-. Learned counsel for the appellants has fairly conceded that the income of Rs.50,200/- from metal scrap business was available only for one accounting year.

Taking an overall view of the matter, this Court is satisfied that for the purpose of assessing loss for the claimants the Tribunal has rightly taken into consideration the salary income of the deceased from M/s. Bhagwati Traders. Other part of the income was obviously generated from some assets or some investments; and by the very nature of such sources, such components of income cannot be considered towards the loss of the claimants.

The income tax returns and the computations of income show that there has been some part of the income earned as interest and obviously such income cannot be considered to have been lost. Similarly, the usufruct of the house property can also not be considered to have been lost on the demise of the victim. Learned counsel emphasized on the statement of the father of the victim where he stated that after demise of the victim the house was closed. This Court is of opinion that merely for such statement about closure of the house property, it cannot be assumed ipso facto that the entire income is lost inasmuch as the source of the income is nevertheless available and that too in the form of capital asset.

Apart from the aforesaid, significant it is to notice that the deceased was an unmarried person of about 22-25 years in age. The Tribunal, even after taking his net salary income at Rs.48,000/- per annum, has deducted only one-third

on his personal expenditure and has proceeded to take entire of the two-third towards loss of contribution for the claimants and thereafter has applied a multiplier of 15 in view of the age of the parents between 40-45 years. The assessment so made by the Tribunal obviously stands on higher side for the deceased being an unmarried person likelihood of his getting married in future and a larger part of his income getting diverted to his own family ought also to have been taken into consideration. Viewed in that light, this Court is clearly of opinion that on the facts and in the circumstances of this case not more one-half of the estimated income of the deceased could have been taken towards the loss for the claimants. Thus, the assessment of pecuniary loss itself stands much on the higher side. Moreover, the Tribunal has proceeded to award rather excessive amount of Rs.70,000/- towards non-pecuniary loss to the sisters, brother and parents of the victim.

The ultimate award made by the Tribunal in sum of Rs. 6,92,000/- cannot be said to be low or inadequate and is rather excessive than that of just compensation. There is no scope for enhancement.

The appeal fails and is, therefore, dismissed summarily.

(DINESH MAHESHWARI), J.

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